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IN THE

Supreme Court of the United States

October Term, 1987

FREDRIC HABERMAN, *et al.*,
Appellants,

v.

WASHINGTON PUBLIC POWER SUPPLY SYSTEM, *et al.*,
Appellees.

On Appeal From the Supreme Court of Washington

JURISDICTIONAL STATEMENT

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QUESTIONS PRESENTED

Where a bond indenture stipulates the laws of the state of the municipal issuer shall constitute a contract with those who purchase the bonds from time to time, do these laws enter into and become part of the bond contract that is afforded constitutional protection against impairment?

If so, were the contract rights of investors who purchased bonds of the Washington Public Power Supply System unconstitutionally impaired under U.S. Const., Art. I, § 10, cl. 1, when the Washington State legislature enacted an amendment retroactively altering express strict civil liability provisions of the Washington State Securities Act to require proof that prospectus fraud was intentionally committed by the "sellers" in order to obtain rescission?

PARTIES BELOW

The persons who constitute appellant-plaintiffs Fredric Haberman, *et al.* are listed on an attachment entitled "Schedule of All Parties to Proceedings Below" appended in lieu of a footnote to this jurisdictional statement. Appellee-defendants Washington Public Power Supply System, *et al.* are also listed on the attached schedule.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1987

FREDRIC HABERMAN, *et al.*,

Appellants,

vs.

WASHINGTON PUBLIC POWER SUPPLY SYSTEM, *ET AL.*,

Appellees.

ON APPEAL FROM THE SUPREME COURT OF WASHINGTON

JURISDICTIONAL STATEMENT

Appellants Fredric Haberman, *et al.* ("plaintiffs") seek review of a final judgment rendered by the Supreme Court of Washington which, in the face of a Contracts Clause challenge (U.S. Const., Art. 1, § 10, cl. 1), held S. 3990, a retroactive amendment to the Washington State Securities Act ("WSSA"), to be constitutional.

Plaintiffs sued to rescind bond contracts representing investments in Washington Public Power Supply System ("WPPSS") Nuclear Projects 4 and 5 bonds ("WPPSS 4/5 bonds"). S. 3990, generally known as the "Scienter Amend-

ment," retroactively altered express WSSA civil liability provisions which held issuers of municipal securities strictly liable for any untrue statements or material omissions in a prospectus. As amended, WSSA now requires investors to prove a Washington State municipality or its agents intentionally commited "prospectus fraud," *Randall v. Loftsgaarden*, 478 U.S. ____, 92 L.Ed.2d 525, 539 (1986), in order to rescind a bond contract.

In accordance with Rule 28.4(c) of this Court, because 28 U.S.C. § 2403(b) may be applicable, plaintiffs have served their revised notice of appeal and this jurisdictional statement upon the Attorney General of the State of Washington. Plaintiffs understand that no "court of the United States" as defined in 28 U.S.C. § 451 has certified to the State of Washington Attorney General the fact that the constitutionality of the Scienter Amendment has been drawn in question.

OPINIONS BELOW[1]

The October 8, 1987 opinion of the court below is reported at 109 Wash.2d 107 and 744 P.2d 1032. Timely motions asking the Washington Supreme Court to reconsider rulings favorable to plaintiffs and intervenors American Express Travel Related Services Company, *et al.* ("Amexco/US") were filed by some of the appellee-defendants ("defendants"). On Feburary 17, 1988, the court below made three minor changes to the text of its opinion, App. at 85, and on February 19, 1988 otherwise denied defendants' motions for reconsideration. App. at 86.

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[1]The Washington Supreme Court rendered its decision on S. 3990. The trial court did not consider S. 3990 because the legislature enacted it after this case had been appealed to the Washington Supreme Court. The trial court found a predecessor to S. 3990, identified by the legislature as S. 4114, to be retroactive and upheld its constitutionality.

STATEMENT OF JURISDICTIONAL GROUNDS

Plaintiffs appeal from a judgment rendered by the court below on October 5, 1987 (modified by order dated February 17, 1988; reconsideration denied on February 19, 1988) rejecting a Contracts Clause challenge to the constitutionality of S. 3990 [published at Laws of 1986, Ch. 304 § 1 amending RCW 21.20.430(7)]. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1257(2).

Plaintiffs filed their original notice of appeal solely on Contracts Clause grounds with the Supreme Court of Washington on March 25, 1988 (App. at 87). An amended notice of appeal was filed on May 11, 1988 (App. at 230).[2]

Although remanded to the trial court for further proceedings, this case is ripe for review. A federal constitutional issue has been finally decided by the highest court in the state of Washington which "will survive and require decision regardless of the outcome of future state proceedings." *Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469, 480 (1975).

The judgment of the Washington Supreme Court allowing a state legislature without good cause to alter retroactively contract remedies seriously erodes an important federal constitutional protection of investors' property rights. Where important federal policies are contravened by state court judgments, this Court has not hesitated to grant immediate review even where, as here, it is conceivable the appellant may ultimately prevail at trial on non-federal grounds. *See Southland Corp. v. Keating*, 465 U.S. 1, 6-8 (1984); *Hudson Distributors*

[2]Plaintiff hereby joins Amexco/US in a separate jurisdictional statement challenging the Scienter Amendment on several other constitutional grounds.

v. Eli Lilly, 377 U.S. 386 (1964); *Mercantile National Bank v. Langdeau*, 371 U.S. 555 (1963).

The WPPSS 4/5 bond $2.25 billion debacle has spawned a cottage industry of related litigation. These cases are presently clogging federal and state court dockets. Reversal of the lower court's judgment upholding the constitutionality of the Scienter Amendment will likely result in summary disposition of this case and many of these related cases.[3]

Pending federal and state cases involving WPPSS 4/5 bonds include the class action entitled *In re WPPSS Securities Litigation*, Case No. MDL—551 (W.D. Wash.),[4] a suit brought by the bond trustee for the WPPSS 4/5 bonds entitled *Chemical Bank v. Benton County PUD No. 1, et al.*, Cause No. C83-1080 (W.D. Wash.), and a group of actions pending in fourteen federal district courts instituted by purchasers of WPPSS 4/5 bonds against individual brokers and broker-dealders. *See, e.g., Kronfeld v. Advest, Inc., et al.*, 85 Civ. 4673 (S.D.N.Y.); *Kronfeld v. First Jersey National Bank*, Civil Action No. 85-2929 (D.N.J.); and *McCarthy v. Miller Schroeder Municipals, Inc.*, Civil Action No. 85-3951 (N.D.Cal.).

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[3]Summary disposition would be appropriate because certain material facts involving WPPSS 4/5 bonds, Statement of the Case, *infra*, are not susceptible of dispute. *See Celotex Corp. v. Catrett*, 477 U.S. ____, 91 L.Ed.2d 268, 274 (1986) ("One of the principal purposes of the summary judgment rule is to isolate and dispose of factually unsupported claims or defenses").

[4]The federal district court in MDL-551, although citing no specific authority in support of its decisions, twice has held the Scienter Amendment unconstitutional under separation of powers concepts. MDL-551 orders dated April 30, 1987 and November 16, 1987. Because of the possibility of being reversed on appeal, the class action plaintiffs in MDL-551 must try their federal and state securities claims as if they both require proof of scienter.

WPPSS related litigation also includes various cases where insurance companies seek to disclaim coverage of the defendants named in this suit and MDL-551. *See, e.g., Transcontinental Insurance Co. v. Washington Public Utility District Systems,* Case No. 2005-4-1 (Wash. Ct. App.); *Grange v. Emerick,* Case No. 84-2-12489-0 (Wash. St. King Cty. Sup. Ct.); and *Ebasco v. General Accident,* Civil Action No. 3-88-1517-T (W.D.Tex.).

Immediate review of the judgment of the court below will lead to reversal of erroneous precedent contrary to established constitutional principles. This Court's decision will impact on all WPPSS 4/5 bond related litigation and likely avoid "a completely unnecessary waste of time and energy in judicial systems already troubled by delays due to congested dockets." *Mills v. Alabama,* 384 U.S. 214, 217-218 (1966).

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

U.S. Const., Art. 1, § 10, cl. 1 provides that:

> No State shall . . . pass any Law impairing the Obligation of Contracts . . .

S. 3990 [codified as RCW 21.20.430(7)[5]] provides:

> Notwithstanding subsections (1) through (6) of this section, if an initial offer or sale of securities that are exempt from registration under RCW 21.20.310 is made by this state or its agencies, political subdivisions, municipal or quasi-municipal corporations, or other instrumentality of one or more of the forego-

[5]The pertinent text of each applicable WSSA civil liability provision other than RWC 21.20.430(7) is included in plaintiffs' appendix. App. at 105-106, 247.

ing and is in violation of RCW 21.20.010(2), and any such issuer, member of the governing body, committee member, public officer, director, employee, or agent of such issuer acting on its behalf, or person in control of such issuer, member of the governing body, committee member, public officer, director, employee, or agent of such person acting on its behalf, materially aids in the offer or sale, such person is liable to the purchaser of the security only if the purchaser establishes scienter on the part of the defendant. The word "employee" or the word "agent," as such words are used in this subsection, do not include a bond counsel or an underwriter. Under no circumstances whatsoever shall this subsection be applied to require purchasers to establish scienter on the part of bond counsels or underwriters. The provisions of this subsection are retroactive and apply to any action commenced but not final before July 27,1985. In addition, the provisions of this subsection apply to any action commenced on or after July 27, 1985.

STATEMENT OF THE CASE

WPPSS is a Washington State municipal corporation established and authorized by state law to construct, own and operpate electrical generating facilities including Nuclear Projects 4 and 5 ("the Projects"). Its constituent members are four Washington cities and 19 Washington public utility districts ("PUDS"). App. at 8. In 1976, 20 of these members, eight other Washington municipalities and one irrigation district, 11 Oregon cities and utility districts, five Idaho cities and 43 rural electrical cooperatives in Washington, Idaho, Montana, Nevada, Oregon and Wyoming ("the Participants") entered into Participants' Agreements to guarantee payment of debt service on WPPSS 4/5 bonds. App. at 8-9.

WPPSS, together with its investment adviser, Blyth Eastman, Paine Webber, Inc., its engineers, accountants and attorneys, thereafter prepared Official Statements and Annual Reports for use in the offer and sale of WPPSS 4/5 bonds. These prospectuses stated that the Projects were feasible and represented that the municipal issuer — based on the guarantees promised by the Participants — had the financial ability to pay debt obligations for the Projects' construction and initial operation. App. at 10.

The WPPSS 4/5 bonds were sold beginning in 1977 pursuant to WPPSS Resolution 890. This bond indenture, in language echoed in Official Statements and Annual Reports subsequently issued, states that after an analysis of engineering, economic and environmental studies, the WPPSS Board had found that construction of the Projects was "economically feasible and required" and that the power and energy "produced by the Projects can be disposed at prices sufficient, with all other available revenues, to retire the Bonds." App. at 128. The bond indenture also identifies the Participants' Agreement as the primary security for payment of debt service on WPPSS 4/5 bonds. App. at 137.

Section 14.1 of Resolution 890, captioned "Resolution and Laws a Contract with Bondholders," states in relevant part:

> In consideration of the purchase and acceptance of the Bonds by those who shall hold the same from time to time, the provisions of the Resolution [and the laws of the State of Washington] shall constitute a contract with the holder or holders of each bond and coupon pertaining thereto, and the obligations of [WPPSS] and the Board under said laws and under the Resolution shall be enforceable by any court of competent jurisdiction. . . .

App. at 129. An amendment to the bond indenture confirmed that Washington state laws existing at the time the bonds were purchased were incorporated into the bond contract. App. at 130-131.

Defendants first represented that the Projects would cost $3.4 billion and would begin operation in 1982 (Project No. 4) and 1984 (Project No. 5). On May 29, 1981, WPPSS announced that, because it was unable to sell WPPSS 4/5 bonds in 1982, construction on the Projects would be temporarily terminated. On the same date, WPPSS withdrew its 15th bond offering of what the court below described as a 15 part series, announcing cost estimates totalling $7 billion in its March 17, 1981 Official Statement "had been understated by approximately $5 billion." App. at 11.[6] On January 22, 1982, the WPPSS Board formally terminated the Projects.

In 1982 Chemical Bank sought a declaratory judgment to enforce the Participants' Agreements. The Washington Supreme Court determined that the agreements of Washington State municipal and PUD Participants to guarantee payment of debt service on WPPSS 4/5 bonds were void *ab initio*. *Chemical Bank v. WPPSS*, 99 Wash.2d 772, 799, 666 P.2d 329 (1983). On November 6, 1984, the Washington Supreme

[6]The admission of a $5 billion understatement of completion costs for the Projects in the March 17, 1981 Official Statement as well as other evidence that the Projects were never feasible entitle investors in WPPSS 4/5 bonds to rescind their bond contracts if the Scienter Amendment is held unconstitutional. Excerpts from the March 17, 1981 Official Statement for the 14th offering of WPPSS 4/5 bonds are included in plaintiffs' appendix at 136-226. The failure of WPPSS and its retained professionals to disclose fully material facts concerning the cost and feasibility of the projects renders false warranties in WPPSS 4/5 bond certificates that "*all acts . . . required by* the Constitution and *statutes of the State of Washington . . .* and to *have been performed* precedent to and *in the issuance of this Bond . . . and have been performed* in due time, form and manner *as prescribed by law.*" App. at 133 (Emphasis added).

Court reconsidered and reaffirmed its previous opinion and further held all other Participants were released from obligations under the Participants' Agrements on the basis of commercial frustration and mutual mistake. *Chemical Bank v. WPPSS*, 102 Wash.2d 874, 888-889, 691 P.2d 524 (1984), *cert. denied*, 471 U.S. 1065 (1985).

Plaintiffs filed suit on May 7, 1984. The primary cause of action asserted by plaintiffs and joined in by Amexco/US was that defendants had violated WSSA by misrepresentations made in selling documents distributed to the marketplace for municipal securities. WPPSS 4/5 bonds purchased by the investors in this case aggregate approximaely $400 million, or nearly twenty percent of the $2.25 billion face amount sold by the municipal issuer. App. at 49.

After extensive oral argument before the trial court, all WSSA causes of action were dismissed. App. at 13. As part of its ruling, the trial court upheld the constitutionality of S. 4114, the predecessor version of the Scienter Amendment. Plaintiffs and Amexco/US appealed and the Washington Supreme Court granted direct review. *Id.*

Prior to enactment of the Scienter Amendment, a municipal issuer that violated RCW 21.20.430(1) — even by an innocent material misrepresentation — was strictly liable for rescission of its bond contracts. The Washington State Department of Licensing, the state agency charged with enforcing WSSA, acknowledged this fact in a memorandum dated March 7, 1985 commenting on the proposed enactment of S. 4114:

> The issue with regard to the [Scienter Amendment] is very important with regard to the pending law suits against WPPSS. The bondholders have brought . . . securities fraud claims . . . under the express provisions of RCW 21.20.430 . . . Under the

> [WSSA], scienter need not be proved in these claims. . .
>
> The character of the suit is such that [the Scienter Amendment] could change the ability of the plaintiffs to make any recovery against either certain parties in the litigation or possibly any of them at all.

App. at 102-103.

The Department of Licensing further acknowledged that bond ratings of municipal debt issues could be affected by passage of the Scienter Amendment: "The bond ratings are based on many criteria relating to the risks to bondholders. Changing the elements of proof under (WSSA) for suing bond holders may result in change in bond ratings." *Id.*

Subsequent to initial passage of the Scienter Amendment, District Judge Browning held in MDL-551 that S. 4114 could not be retroactively applied in the absence of an express legislative intent indicating the amendment was retroactive. MDL-551 Order dated January 24, 1986. Within two months of this ruling, the Washington State Legislature enacted S. 3990, containing a specific provision making the Scienter Amendment retroactive to "any action commenced but not final before July 27, 1985." App. at 107.

Washington State legislators were subjected to strong political pressure to pass this legislation by municipal officials of the 23 WPPSS members and Washington State Participants, entities who pursuant to RCW 21.20.430(3) could bear secondary responsibility to satisfy judgments rendered against WPPSS under RCW 21.20.430(1). App. at 27. While ostensibly proposed to shield municipal officials, one Senator candidly explained that passage of the Scienter Amendment would in fact confiscate funds of investors such as plaintiffs:

> There was one thing in this scheme that [the municipal officials] overlooked and that was maintaining the responsibility. Now they're down here and they want us to do this retroactively . . . because of the ratepayers in the state of Washington. In other words, we are wanting to help confiscate this money because it may raise electrical rates in the state. . .

Remarks by Senator Garrett. App. at 121.

Not all Washington State legislators were willing to succumb to the strong passions aroused by the specter of Washington municipalities meeting their contractual obligations to investors in WPPSS 4/5 bonds. As stated by one Senator: "(W)e should be trying to stay with the contract that originally had been set up and with the original facts that these bondholders had certain rights that also should be protected in terms of contract rights." Remarks of Senator Zimmerman. App. at 118.

Yet another Senator expressed a constitutional distaste for passage of the Scienter Amendment in these terms: "I don't like to speak in terms of principal (sic), but I can't think of another word and I don't like the Legislature stepping in and changing contracts. Now the PUD's made a contract with the individuals and it traces all the way back to the beginning. I have to rest my case on that point." Remarks of Senator Moore. App. at 124.

The court below characterized plaintiffs' argument to be that "the negligence standard existing prior to the RCW 21.20. 430(7) amendment became a part of their bond contracts because their bond purchases pursuant to the contracts were made in contemplation of existing law." Failing to accept the logic of this argument, the court below stated: "(W)here a general statute involved provides a remedy, which is later changed, the previous remedy will not ordinarily be implied

as an unexpressed term of an otherwise express contract. (Citation omitted)." App. at 39-40.

The Washington Supreme Court then set forth two specific grounds for rejecting plaintiffs' Contracts Clause argument. It declared that the strict liability negligence standard existing prior to the enactment of S. 3990 "was not expressly incorporated as a term of the bond contract" and held that the previous standard of proof was not an important reason for favorable bond ratings or an important factor in investment decisions to purchase WPPSS 4/5 bonds. App. at 40.

The judgment of the court below insulates Washington State municipal officials and municipalities from the liability to which they were subject under contract principles at the time WPPSS 4/5 bonds were issued. But the constitutional mischief it causes goes much further. By its plain language, the Scienter Amendment shields from liability municipal "employees" and "agents" — persons which in this case arguably inlude an institutional investment advisor, Blyth Eastman, Paine Webber, Inc., Ernst & Whinney, a national accounting firm, and three national engineering firms, two of whom are subsidiaries of Fortune 500 corporations.

STATEMENT OF GROUNDS FOR PLENARY CONSIDERATION

History and Construction of Contracts Clause

The Constitutional Framers proposed Art. I, § 10, cl. 1 as a means of prohibiting all "retrospective interferences" in contractual relationships. *The Records of the Federal Convention of 1787*, Vol. II, p. 439.[7] The Contracts Clause was construed

[7]James Madison of Virginia objected to the proposal because he felt that the draft Constitution's prohibition of "ex post facto laws" already precluded such retrospective interferences. *Id.* at p. 440. John Dickinson of

by this Court in early cases to be an absolute bar to state legislation impairing contractually established property rights:

> Whatever respect might have been felt for the state sovereignties, it is not to be disguised that the Framers of the Constitution viewed, with some apprehension, the violent acts which might grow out of the feelings of the moment; and that the people of the United States, in adoping the [Constitution], have manifested a determination to shield themselves and their property from the effects of those sudden and strong passions to which men are exposed. The restrictions of the legislative power of the states are obviously founded on this sentiment; and the Constitution of the United States contains what may be deemed a bill of rights for the people of each state.

Fletcher v. Peck, 6 Cranch 87, 137-38 (1809) (Marshall C.J.)

Over the years, this Court has continued to view the Contracts Clause as maintaining an "important place in our constitutional jurisprudence." *United States Trust Co. v. New Jersey*, 431 U.S. 1, 15 (1977). Unless the challenged legislation has been shown to serve an overriding public policy, *Home Building & Loan Association v. Blaisdell*, 290 U.S. 395, 434-438 (1934), this Court has struck down state laws retroactively impairing municipal bond and other municipal debt contracts. *See United States Trust Co. v. New Jersey*, 431 U.S. at 19, n.17; *Louisiana v. New Orleans*, 215 U.S. 170 (1909); *Wolff v. New Orleans*, 103 U.S. 358 (1881).

Delaware corrected Mr. Madison. "On examining Blackstone's commentaries, he found that the terms "ex post facto" related to criminal cases only; that they would not consequently restrain the States from retrospective laws in civil cases, and that some further provision for this purpose would be requisite." *Id.* at pp. 448-449.

Of course, when governmental entities of the state are the contracting parties, as is the case here, appellate courts have looked closely at any proffered justification because it is the state's own self interest that is at stake. In almost every such situation, the reviewing court has found the impairing legislation unreasonable and, therefore, unconstitutional. *See Energy Reserves Group v. Kansas Power & Light Co.*, 459 U.S. 400, 412, n.14 (1983). *See also Continental Illinois National Bank and Trust Co. v. State of Washington*, 696 F.2d 692 (9th Cir. 1983) *appeal denied for want of standing*, 460 U.S. 1077 (1983) (holding that an earlier attempt to impair WPPSS bond contracts violated the Contracts Clause because, *inter alia*, "WPPSS is itself a political subdivision of the State, made up of other political subdivisions . . . We cannot view the contracts beween WPPSS and the plaintiffs as those between private parties. Because the State is a contracting party, we give less deference to its claims of justification for impairment.")

Application of Contracts Clause to S. 3990

The right to sue for return of compensation paid to purchase securities under RCW 21.20.430(1) is a statutory codification of the common law right to rescind a contract based upon negligent or warranty strict liability principles. *See* 3 *Corbin on Contracts* § 613, n.7. Prior to enactment of S. 3990, the civil liability provisions of WSSA provided an express rescission remedy regardless of fault by the seller. *See Kittilson v. Ford*, 93 Wash.2d 223, 608 P.2d 264, 266 (1980) (holding the intent with which a seller of securities makes statements is "irrelevant" under the terms of RCW 21.20. 010(2) and that WSSA is violated merely if the statements made are materially false). As one court has explained, the remedy of rescission under state securities laws is analogous to a contractual action for "breach of warranty or innocent

misrepresentation." Neither "depend upon a showing of the [s]eller's conscious falsity." *Bradley v. Hullander*, 277 S.C. 6, 249 S.E.2d 486 (1978).

The Washington Supreme Court recognized the strict liability imposed by WSSA absent the Scienter Amendment. The court below not only broadly interpreted the term "seller" as used in WSSA "to include those parties who have the attributes of a seller," it also compared WSSA's express liability provisions to Section 11 of the Securities Act of 1933, 15 U.S.C. § 77k. App. at 26. Comparison by the Court below of RCW 21.20.430(1) to Section 11 of the 1933 Act established that all persons who have a direct role in preparing the false and misleading prospectuses for the WPPSS 4/5 bonds are strictly liable to the plaintiffs as victimized investors if the enactment of the Scienter Amendment is held to violate their contract rights.[8]

Succintly put, U.S. Const., Art. I, § 10, cl. 1 is implicated in this case because passage of the Scienter Amendment eliminated a contractual cause of action. Proof of fraud, as is mandated by S. 3990, requires significantly different and more detailed evidence than a contract rescission claim based on misrepresentation. *Mary Pickford Co. v. Bayly Brothers, Inc.*, 12 Cal.2d 501, 86 P.2d 102, 110-111 (1935).

The question presented by this appeal was expressed by the court below in the following language: "Initially, we note that in situations where statutes govern the interpretation and

[8]As stated in *Herman & McLean v. Huddleston*, 459 U.S. 375, 381-382 (1983), "[Section 11) was designed to assure compliance with the disclosure provisions of the [1933] Act by imposing a strict standard of liability on the parties who play a direct role in a registered offering. . . . Liability against the issuer of a security is virtually absolute." *See also Ernst & Ernst v. Hochfelder*, 425 U.S. 185, 200 (1976) (Section 11 of the 1933 Act creates an express liability for misleading statements by an issuer in a prospectus regardless of fault).

enforcement of private agreements, such statutes may create contractual rights. . .'' App. at 39.

After acknowledging the force of plaintiffs' Contracts Clause argument, the Washington Supreme Court then advanced two grounds for upholding the constitutional validity of the Scienter Amendment. It declared first that Washington State laws existing when WPPSS 4/5 bonds were sold had not been incorporated in the bond contract and second that it ''did not believe that the negligence standard of liability in force at the time of the bond purchases was an important reason for favorable bond ratings or . . . in the bondholders' decisions to purchase the bonds.'' App. at 40.

The first ground is factually wrong. The laws of the State of Washington were specifically incorporated into the bond indenture for WPPSS 4/5 bonds. Section 14.1 of Resolution 890 not only makes this explicit but represents that ''in consideration of the purchase'' of WPPSS 4/5 bonds: ''*[the laws of the State of Washington] shall constitute a contract with the holder* or *holders of each Bond* . . . and the obligation of [WPPSS] under said law shall be *enforceable by any court of competent jurisdiction* . . .'' App. at 129. (Emphasis Added)

The second articulated ground is conceptually wrong. It engrafts on municipal contract law a reliance requirement not generally held to exist in contractual relationships where the intent of the parties is expressed in the bond contract itself. ''It is perfectly clear, that any law which enlarges, abridges, *or in any manner changes the intention of the parties resulting from the stipulations in the contract,* necessarily impairs it.'' 2 Story, *Commentaries on the Constitution* (4th Ed.) § 1385, at 245 (Emphasis added).

Plaintiffs do not assert their Contracts Clause challenge solely on the general proposition that laws existing at the time

and place of the making of a bond contract enter into and form a part of it. Their constitutional claim on this appeal is securely anchored upon binding stipulations made by WPPSS in the bond contract. These agreements are property rights that should be protected against confiscation by state legislatures. *Cf. Contributors to the Pennsylvania Hospital v. Philadelphia*, 245 U.S. 20, 22-23 (1917) (holding contract rights are property rights which can only be taken by a state if just compensation is paid); *Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 428 (1982) (holding a cause of action is a species of property protected by the constitution).

In considering whether plaintiffs' contract rights to rescind WPPSS 4/5 bonds were impaired, the court below failed to acknowledge the improper motive of the Washington State legislature. The Scienter Amendment serves no general social purpose. Only the narrow parochial interests of WPPSS, its members, and its retained professionals — the very persons alleged to be responsible for preparing false Official Statements and Annual Reports used to sell WPPSS 4/5 bonds — are served by the shield of S. 3990. As this Court aptly stated long ago: "It is the motive, the policy, the object, that must characterize the legislative act, to affect it with the imputation of violating the obligation of contracts." *Ogden v. Saunders*, 12 Wheaton 213, 291 (1827).

It is difficult to conceive how retroactive application of the Scienter Amendment meets any legitimate public policy reasonably required to protect the welfare of Washington municipal officials or ratepayers. Protection from liability of municipal officials could have been accomplished by giving them qualified immunity from suits under WSSA.[9] Ratepayers could have

[9]Indeed, before passage of the Scienter Amendment, RCW 21.20.430(7) had been amended in 1981 to preclude recovery under WSSA against certain municipal officials absent proof of scienter. [Laws of 1981, Ch. 272, § 9]

been shielded from increases in electric charges attributed to the WPPSS 4/5 bond debacle by limiting the ability of Washington State municipalities and PUDS to pass through their costs.

Even if concerns for municipal officials and ratepayers could qualify as a necessary social purpose, the sweeping language of the Scienter Amendment brings private parties not the proper concern of state legislatures within its ambit. It shields from the strict liability provisions of WSSA virtually every person connected with WPPSS — including "agents" and "employees" such as WPPSS' investment adviser, accountants, engineers and attorneys. While a state should not be unduly restricted in its ability to legislate so as to safeguard the vital interests of its people, *El Paso v. Simmons*, 379 U.S. 497, 508 (1965), it is "not completely free to consider impairing the obligations of . . . contracts on a par with other policy alternatives." *United States Trust Co. v. New Jersey*, 431 U.S. at 30-31. *Accord Allied Structural Steel Co. v. Spannaus*, 438 U.S. 234, 244-248 (1978).

The enactment of S. 3990 by the Washington State legislature is a classic example of an unconstitutional retrospective interference with contract rights resulting from the "sudden and strong passions to which men are exposed." *Fletcher v. Peck*, 6 Cranch at 138. Retroactive elimination of plaintiffs' strict liability cause of action under WSSA by the Washington State legislature substantially and unreasonably impairs contract rights expressly made part of WPPSS Resolution 890. Protection of the property rights of thousands of WPPSS 4/5 bond purchasers calls for this Court's immediate attention.

CONCLUSION

For the reasons stated above, this Court should note probable jurisdiction over this appeal, require briefs on the merits and oral argument or grant such other and further relief as would be appropriate in the premises.

Respectfully submitted,

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Robert K. Walsh, Esq.
JAFFE & SCHLESINGER, P.A.

Dated: May 19, 1988

SCHEDULE OF ALL PARTIES TO PROCEEDINGS BELOW

Appellant-plaintiffs Fredric Haberman include:

Individuals, Estates and Trusts (showing state of resident):

Fredric Haberman, M.D., a New Jersey Resident; Claude Purvis, a Washington Resident; Nerou Cheng, a New York Resident; Ted R. Pape, a Washington Resident; Aubrey L. Moss, a New Jersey Resident; John H. Biggs, a New Jersey Resident; Nicholas C. Dascoli, a New Jersey Resident; Arnold Goldberg, a New Jersey Resident; Frederick J. Gormley, a New Jersey Resident; Irving J. Gross, a New Jersey Resident; Rose Gross, a New Jersey Resident; Edward Kawash, a New Jersey Resident; Frank T. Kiel, a New Jersey Resident; Martin I. Schwartz, a New Jersey Resident; Kenneth C. Washburne, a Texas Resident; Jack B. Weinberger, a Texas Resident; Alice W. Wise, a New Jersey Resident; Lloyd W. Wise, a New Jersey Resident; Norma Sandison, a Washington Resident; Daniel Gelfond, a New York Resident; Jeanne Christopher, a Washington Resident; John S. Christopher, a Washington Resident; Grace Freeman Rosen, a California Resident; Leo Freeman, a California Resident; George M. Hrunka, a New Jersey Resident; Charles M. Judge, a New Jersey Resident; Peter Madan, a New Jersey Resident; Peggy Ann Madan, a New Jersey Resident; Robert W. Madan, a New Jersey Resident; William A. Keyser, a New Jersey Resident; Marguerite E. Keyser, a New Jersey Resident; Marguerite E. Keyser, POA for Francis J. Herron, a New Jersey Resident; Merton S. Freeman, a California Resident; James Korsten, M.D., a New Jersey Resident; Albert Baker, a California Resident; Barbara Jentis, a New Jersey Resident; Leigh E. Dunn, a California Resident; Rachel S.

Dunn, a California Resident; Howard L. Ray, a Washington Resident; Daniel A. Berkoff, a California Resident; Albert B. Berkoff, a California Resident; George C. Ganzberg, a California Resident; Gabriel A. Calenda, a New Jersey Resident; Charles Zeidner, a New Jersey Resident; Corinne S. Corwin, a California Resident; Lucille Zager, a California Resident; Fay Freeman, a California Resident; Ronald Klinger, a New York Resident; Robert Luban, a New Jersey Resident; Carson L. Shade, a California Resident; David Fiske, M.D., a California Resident; Albert W. Thompson, M.D., a California Resident; Jack Schaefer, a Nevada Resident; Robert L. Mast, a New Jersey Resident; Loretta Steinbach, a California Resident; Robert N. Wright, a California Resident; Jacob Malit, a Florida Resident; Doris Malit, a Florida Resident; Al Groschen, a California Resident; Marvin Neben, a California Resident; Shirley Neben, a California resident; William C. Starrett, II, a California Resident; Arthur Brown, a Florida Resident; Arthur Brown, Trustee for 1979 Ethel Glazer Trust, a Florida Resident; Saul M. Ferman, a California Resident; Jack A. Schaps, a California Resident; Leon Fein, a California Resident; Lawrence W. Pendelton, a California Resident; Imon R. Gammage, a Washington Resident; Lucy E. Gammage, a Washington Resident; Dave Rosenthal, a California Resident; Bernie Rosenthal, a California Resident; Albert M. Grathwol and John D. Grathwol, Trustees of the Mr. and Mrs. Albert M. Grathwol Trust of 1981, a California Resident; Kira Fomenko, a California Resident; Abraham G. Luboff, a California Resident; Deborah R. Luboff, a California Resident; William D. Cane, a Montana Resident; Charles F. Dester, a California Resident; Albert Caponetto, a Nevada Resident; Harold B. Hogle, a Washington Resident; G. Ralph Bartolme, Esq., a California Resident; George Tomasini, a California Resident; Albert R. Cox, a Texas

Resident; Norman L. Kaufman and Lillian Kaufman, a California Resident; Herbert L. Press, a California Resident; J. Corlas Cole, a California Resident; Herbert Eckerling, a California Resident; Perrin H. Eckerling, a California Resident; Morrison Rutherford, M.D. a California Resident; William Randall Dawson, a California Resident; Henry L. Pohndorf, an Idaho Resident; Dr. Wally Teuscher, a Washington Resident; Frank D. DeVol, a California Resident; Samuel Lavine Trust, a California Resident; Rose Lavine Trust, a California Resident; J. Bruce Forbes, a California Resident; Milton & Charlotte Forbes, a California Resident; Joel M. Davis, a California Resident; Ron Nelson, a California Resident; Charles M. Schulz, a California Resident; Edward P. Swain, Jr., a Washington Resident; W.I. Osborne, a Washington Resident; Johanna Budman, a California Resident; Christine A. Simon, a California Resident; Peter Van Halen, a California Resident; Glenn R. Lawrence, a California Resident; Ernest E. Elmore, a California Resident; June T. Shepherd, a Washington Resident; Vincent DeSciose, a Nebraska Resident; Peter M. Jordan, a California Resident; Neale Onstot, a Nevada Resident; Esther Kaplan, a California Resident; Phyllis B. Zasloff, a California Resident; Patsy Riccardello, a New Jersey Resident; Myron Erdmann, a California Resident; Edythe Erdmann, a California Resident; Leo S. Guthman, an Illinois Resident; Charles W. Mullenix, an Illinois Resident; Margaret R. Just, an Illinois Resident; Marshall S. Salkin, M.D., an Illinois Resident; Paul Doll, Trustee for Audrey B. Love, a Connecticut Resident; Robert M. Carlton, M.D., a California Resident; Bernadice A. Rischoff, a Pennsylvania Resident; Shirley M. Elliott, a California Resident; Robert N. Mayer, an Illinois Resident; Dr. Raymond M. Chaitin, a California Resident; Sydney Vender, a California Resident; Robert Kunst, a California Resident; Milton Greenfield, Jr., a Missouri

Resident; Catherine C. Swartchild as Trustee for James Swartchild UAD 10/25/62, an Illinois Resident; Rose Kunst, a California Resident; Jack H. Irving, a California Resident; Florence Irving, a California Resident; David Bachner, a California Resident; Rita Bachner, a California Resident; George L. Kroll as Trustee for George L. Kroll Trust UAD 12/5/72, a California Resident; Michael Cudahy, an Illinois Resident; Elizabeth Stein as Trustee of Living Trust, an Illinois Resident; Jeanette S. Elliott as Trustee for Jeanette S. Elliott Trust, an Arizona Resident; Helen F. Culver, an Illinois Resident; Philip J. James, a Nebraska Resident; Edward S. Tishman, Trustee U/A 12/18/72, f/b/o Andrew P. Tishman, a New York Resident; Edward S. Tishman, Trustee U/A 1/20/82, f/b/o Andrew P. Tishman, a New York Resident; Edward S. Tishman, Trustee U/A 2/28/79, f/b/o Leslie Tishman, a New York Resident; Lelan H. Menke, a California Resident; June R. Menke, a California Resident; Beatrice T. Kester, a California Resident; Michael Mullins, a California Resident; Maryea Mullins, a California Resident; Frank Williams, a Florida Resident; Bea Tanne Morris, a New Jersey Resident; James M. Maul, a California Resident; Beverly W. Maul, a California Resident; Max W. Strauss, a California Resident; John Farnam, an Illinois Resident; Robert G. Farnam, a California Resident; Franklin W. Farnam, an Arizona Resident; Edward Jacks, an Illinois Resident; Jonathan S. Powell, a California Resident; John Verry, a California Resident; Jack Jay, a California Resident; A. Linc Lancet, a California Resident; Peoples National Bank of Washington, Executor for the Estate of John H. Sellen, Deceased, a Washington Resident; W.J. Thomas Ferguson, Executor for the Estates of Mary Violet and William H. Ferguson, Deceased, Washington Residents; William B. Moore, a Washington Resident; John R. Janet, a California Resident; Louise Shapiro, a California Resident; Robert J. Anderson, a California Resident; Barnet M.

Daniels, a Florida Resident; Blanche Daniels, a Florida Resident; Merlin C. Perkins, a Utah Resident; Anthony Riccardello, a New Jersey Resident; William Hauptman, a New Jersey Resident; Dr. Alfred J. Cinelli, a New Jersey Resident; Gayle M. Schubac, trustee for Judy Radcliffe, a California Resident; Gayle M. Schubach, trustee for Henry Schubach, a Utah Resident; Gertrude Schwartz, a New Jersey Resident; W.T. Cummins, a Kentucky Resident; Joe Aggio, a California Resident; Rosalia Aggio, a California Resident; Florence Elliott, a California Resident; Florence Savin, Trustee for Madeline Hecht, a Connecticut Resident, Karl B. Kluge, an Arizona Resident; Geraldine V. Kluge, an Arizona Resident; Edward D. Meigs Trust, UDT dated 7/8/82, an Arizona Resident; Garth Living Trust, a California Resident; Saul Haimowitz, a California Resident; Ruth Haimowitz, a California Resident; Westmount Properties, a California Resident; Saul Haimowitz, Inc., Employees Retirement Trust Fund, a California Resident; Robert F. McNulty, a California Resident; Fred R. Jueneman or Rodney W. Jueneman, Co-trustees UAD 9/14/77, a California Resident; Yale M. Leavy, a Florida Resident; Edwin L. Garthwaite, a California Resident; Arthur Hargrave, a California Resident; Eugene E. Koubeck, a California Resident; Richard L. Bakman, a California Resident; Lois Gregory, a California Resident; James P. Devere, a California Resident; Richard F. Hamilton, a California Resident; Jean Needham, a California Resident; William P. Allen, an Arizona Resident; Helene P. Allen, an Arizona Resident; Edward C. Forsyth, a California Resident; Ed Daniels, a California Resident; Richard Fuchslin, a California Resident; Helen Taylor, a California Resident; and E. Nicholas Sargent, M.D., a California Resident.

Corporations listed in accordance with Rule 28.1

Parent Companies, Subsidiaries (except wholly owned) and Affiliates of Corporate Appellants

American Family Life Assurance Company of Columbus
Parent – American Family Corporation
Non-wholly owned subsidiary of American Family Corporation: Pan American Family Insurance Corporation

American States Insurance Company
Insurance Company of Illinois
The Lincoln National Life Insurance Company
Parent – Lincoln National Corporation
Non-Wholly owned subsidiary of The Lincoln National Life Insurance Company:
Employers Health Insurance Company
Health Horizons, Inc.

American Economy Insurance Company
Parent – American Economy Insurance Company is a wholly owned subsidiary of American States Insurance Company

Chicago Title Insurance Company
was wholly owned subsidiary of Lincoln National Corporation sold to Allegheny Corp.

Audubon Indemnity Company
United Guaranty Corporation
Parent – American International Group, Inc.

Balboa Insurance Company
Provident Alliance Life Insurance Company
Parent – Balboa Insurance Company and Provident Alliance Life Insurance Company are wholly owned subsidiaries of Avco Financial Services, Inc., which is a wholly owned subsidiary of Textron, Inc.

B.M. Behrends Bank

Barnett Banks Trust Co., N.A.
Parent – Barnett Banks Incorporated

The Broad Street National Bank of Trenton – changed to First Jersey National Bank/Central
Parent – National Westminister Bank Corp. New Jersey

Brown County State Bank
Parent – Maurice L. Quinn Properties, Inc.

Central National Insurance Company of Omaha
Parent – Central National Insurance Company of Omaha is a wholly owned subsidiary of Drum Financial Corporation, which is a wholly owned subsidiary of Professional Underwriters Investment Company

Cielo Vista Bank

Colonial Penn Insurance Company
Colonial Penn Life Insurance Company
Parent – Colonial Penn Insurance Company, Colonial Penn Life Insurance Company and Intramerica Life Insurance Company are wholly owned subsidiaries of Colonial Penn Holdings, Inc., which is a wholly owned subsidiary of Colonial Penn Group, Inc., which is a wholly owned subsidiary of FPL Group Capital, Inc., which is a wholly owned subsidiary of FPL Group, Inc.

Coronado Bank
Parent – TN Bancshares, Inc.
Affiliate – Texas National Bank

Empire Fire & Marine Insurance Company
Parent – Zurich Insurance Company

Farm Bureau Mutual Insurance Company of Michigan
Affiliates:
Michigan Farm Bureau
Farm Bureau Life Insurance Company of Michigan
F.B. Annuity Company
Farm Bureau General Insurance Company of Michigan
Farmers Petroleum Cooperative, Inc.
Farmers Crude Production Company
Corporate Services, Inc.
Community Service Acceptance Corp.

Farmers State Savings Bank
Parent – Fidelity Ban Corporation

1st Source Bank
Parent – 1st Source Corporation

First Fidelity Bank, National Association, New Jersey
Parent – First Fidelity Bancorporation
Non-Wholly owned subsidiaries:
. The Treasurer, Inc.
T. Towers, A.C., Inc.
Allied International Bancorp., Inc.
Allied Bank International

Camden Fire Insurance Association
General Accident Insurance Company
Pennsylvania General Insurance Company
Potomac Insurance Company of Pennsylvania
Parent – General Accident Fire & Life Assurance Corporation, P.L.C.

Criterion Insurance Company – changed to GEICO Indemnity Company
Parent – GEICO Indemnity Company is a wholly owned subsidiary of Government Employees Insurance Company which is a wholly owned subsidiary

of GEICO Corporation
Non-Wholly Owned Subsidiary:
AVEMCO Corporation
AVEMCO Insurance Company

Government Employees Insurance Company
Parent – GEICO Corporation
Non-Wholly Owned Subsidiaries:
Bond Investors Group, Inc.
Bond Investors Guaranty Insurance Company
Polaris Syndicate Corporation

Citizens Insurance Company of America
Parent – The Hanover Insurance Company

The Hanover Insurance Company
Parent – The Hanover Insurance Company is a partially-owned (51.3%) subsidiary of SMA Financial Corp. The remaining 48.7% of The Hanover Insurance Company is publicly owned. SMA Financial Corp. is wholly owned by State Mutual Life Assurance Company of America
Non-wholly owned subsidiaries:
Beacon Insurance Company of America
California Compensation & Fire Company

Harleysville Mutual Insurance Company (parent)
Affiliates:
Colonial Bank – Northern Region
Colonial Bank of Montgomery
Colonial Bank – Gulf Coast
Colonial Building Corporation

Mercantile National Bank of Indiana
Parent – Mercantile Bancorp, Inc.

Midlantic National Bank

Midlantic National Bank/North
Parent – Midlantic National Bank and Midlantic National Bank/North are wholly owned subsidiaries of Midlantic Banks Inc., which is a wholly owned subsidiary of Midlantic Corporation

Modern Service Insurance Company
Mutual Service Casualty Insurance Company
Parent – MSI Insurance Company

The Morris County Savings Bank
Parent – First Fidelity Bancorporation

NCNB Bancorporation, Inc.
Parent – NCNB Florida Bancorp, Inc.
Non-wholly owned subsidiary:
Eastern National Bank

North Carolina Farm Mutual Insurance Company

Pennbank/Erie – now known as
Pennbank
Parent – Pennbancorp
Affiliates:
First Seneca Bank
Gallatin National Bank
Pennbancorp Brokerage Services Company
Pennbancorp Investment Company
Pennbancorp Life Insurance Company
United Data Services, Inc.

Pennsylvania National Mutual Casualty Insurance Company (parent)

Philadelphia National Bank
Parent – CoreStates Financial Corp

Philadelphia Savings Fund Society – now known as Meritor Savings Bank

Progressive Casualty Insurance Company
Parent – The Progressive Corporation
Affiliates:
Progressive County Mutual Insurance Company
Progressive Mutual Insurance Company

Prudential Property & Casualty Insurance Company
Prudential Reinsurance Company
Parent – The Prudential Insurance Company of America

Commonwealth Land Title Insurance Company
Reliance Insurance Company
Parent – Reliance Financial Services Corporation

Planet Insurance Company
Parent – Reliance Insurance Company

Regent Insurance Company
Parent – General Casualty Company of Wisconsin

Rockwood Insurance Company
Parent – Rockwood Holding Company

SouthTrust Bank of Baldwin County
SouthTrust Bank of Calhoun County
SouthTrust Bank of Dothan
SouthTrust Bank of Etowah County
SouthTrust Bank of Huntsville
SouthTrust Bank of Marion County
SouthTrust Bank of Mobile
SouthTrust Bank of Sand Mountain
SouthTrust Bank of Selma
SouthTrust Bank of Alabama, N.A.
Parent – SouthTrust Corporation
Affiliates:
SouthTrust Bank of Andalusia
SouthTrust Bank of Arab

SouthTrust Bank of Auburn
SouthTrust Bank of Central Alabama
SouthTrust Bank of Clay County
SouthTrust Bank of Cleburne County
SouthTrust Bank of Coffee County
SouthTrust Bank of Covington County
SouthTrust Bank of Cullman
SouthTrust Bank of Decatur
SouthTrust Bank of Hartselle
SouthTrust Bank, Montgomery
SouthTrust Bank of Ozark
SouthTrust Bank of the Quad Cities
SouthTrust Bank of Randolph County
SouthTrust Bank of Talladega County
SouthTrust Bank of Tuscaloosa County
SouthTrust Bank of Walker County
SouthTrust Bank National Bank
SouthTrust Bank of Central Florida
SouthTrust Bank of Jackson County
SouthTrust Bank of Jacksonville
SouthTrust Bank of Pinellas County
SouthTrust Bank of Tampa
SouthTrust Bank of Volusia County
Vista Bank of Volusia County
SouthTrust Brokerage Services Inc.
SouthTrust Data Services Inc.
SouthTrust Financial Services Inc.
SouthTrust Insurance Agency Inc.
SouthTrust Leasing Inc.
SouthTrust Life Insurance Co.
SouthTrust Mobile Services Inc.
SouthTrust Mortgage Corporation

Stein Roe Tax Exempt Bond Fund, Inc.

Suburban Trust & Savings Bank

Textile Financial Corp.

Union Bank & Trust Co. – now known as
NBD Grand Rapids, N.A.
Parent – NBD Bancorp, Inc.
Affiliates:
Chung Hua Bills Finance Corporation
Michell NBD Limited
NBD Asia Ltd.

Union Safe Deposit Bank (parent)

United Jersey Bank
Parent – United Jersey Banks

Wausau Insurance Companies
– trade name for all Wausau companies – not a legal entity

Employers Insurance of Wausau, A Mutual Company (parent)
Affiliates:
Nationwide Insurance Company
Nationwide Mutual Insurance Company

Wausau Underwriters Insurance
Parent – Wausau Underwriters Insurance is a wholly owned subsidiary of Wausau Service Corp., which is a wholly owned subsidiary of Employers Insurance of Wausau, A Mutual Company

World-Wide Underwriters Insurance Company
formerly a wholly owned subsidiary of Employers Insurance of Wausau, A Mutual Company; Employers Insurance of Wausau holds a power of attorney authorizing it to continue prosecution of this suit on behalf of World-Wide Underwriters Insurance Company

Wemple State Bank

Appellant-intervenors American Express Travel Related Services Company, et al. ("Amexco/US") include:

American Express Travel Related Services Company, Inc., American Express International Bank Corporation, Fireman's Fund Insurance Company, Associated Indemnity Corporation and United States Trust Company of New York.**

Appellee-defendants Washington Public Power Supply System, et al. are:

Washington Public Power Supply System, Public Utility District No. 1 of Benton County, Washington; Public Utility District No. 1 of of Chelan County, Washington; Public Utility District No. 1 of Clallam County, Washington; Public Utility District No. 1 of Clark County, Washington; Public Utility District No. 1 of Cowlitz County, Washington; Public Utility District No. 1 of Douglas County, Washington; City of Ellensburg, Washington; Public Utility District No. 1 of Franklin County, Washington; Public Utility District No. 1 of Grant County, Washington; Public Utility District No. 1 of Grays Harbor County, Washington; Public Utility District No. 1 of Klickitat County, Washington; Public Utility District No. 1 of of Lewis County, Washington; Public Utility District No. 1 of Mason County, Washington; Public Utility District No. 1 of Okanogan County, Washington; Public Utility District No. 1 of Pacific County, Washington; City of Richland, Washington; Public Utility District No. 1 of Skamania County, Washington; Public Utility District No. 1 of

**Plaintiffs hereby incorporate by reference the listing of the parents and subsidiaries of Amexco/US found in the Jurisdictional Statement filed by their attorneys of record on this appeal.

Snohomish County, Washington; City of Tacoma, Washington; Public Utility District No. 1 of Wahkiakum County, Washington; City of Seattle, Washington; Public Utility District No. 1 of of Ferry County, Washington; Public Utility District No. 1 of Kittitas County, Washington; Central Lincoln People's Utility District, Oregon; Clatskanie People's Utility District, Oregon; Public Utility District No. 3 of Mason County, Washington; Northern Wasco County People's Utility District, Oregon; Public Utility District No. 1 of Pend Orielle County, Washington; Tillamook People's Utility District, Oregon; Vera Irrigation District No. 15, Washington; City of Bandon, Oregon; City of Blaine, Washington; City of Bonners Ferry, Idaho; City of Burley, Idaho; City of Canby, Oregon; City of Cascade Locks, Oregon; City of Centralia, Washington; City of Drain, Oregon; City of Heyburn, Idaho; City of Idaho Falls, Idaho; Town of McCleary, Washington; City of McMinnville, Oregon; City of Milton-Freewater, Oregon; City of Port Angeles, Washington; City of Rupert, Idaho; City of Springfield, Oregon; Town of Steilacoom, Washington; City of Sumas, Washington; Adler Mutual Light Company, Washington; Benton Rural Electric Association, Washington; Big Bend Electric Cooperative, Inc., Washington; Blachlylane Electric Cooperative Association, Oregon; Central Electric Cooperative, Inc., Oregon; Clearwater Power Company, Idaho; Columbia Basin Electric Cooperative, Inc., Oregon; Columbia Rural Electric Association, Inc., Oregon; Consumers Power, Inc., Oregon; Coos-Curry Electric Cooperative, Inc., Oregon; Douglas Electric Cooperative, Inc., Oregon; Elmhurst Mutual Power and Light Company, Washington; Fall River Rural Electric Cooperative, Inc., Idaho; Glacier Electric Cooperative, Montana; Hood River Electric Cooperative, Oregon; Idaho County Light & Power Cooperative Association, Inc., Idaho; Inland Power & Light Company,

Washington; Kootenai Electric Cooperative, Inc., Idaho; Lane Electric Cooperative, Inc., Oregon; Lincoln Electric Cooperative, Inc., Washington; Lost River Electric Cooperative, Inc., Idaho; Lower Valley Power & Light, Inc., Wyoming; Midstate Electric Cooperative, Inc., Oregon; Missoula Electric Cooperative, Inc., Montana; Nespelem Valley Electric Cooperative, Inc., Washington; Northern Lights, Inc., Montana; Ohop Mutual Light Company, Washington; Okanogan County Electric Cooperative, Inc., Washington; Orcas Power & Light Company, Washington; Parkland Light & Water Company, Washington; Prairie Power Cooperative, Inc., Idaho; Raft River Rural Electric Cooperative, Inc., Idaho; Ravalli County Electric Cooperative, Inc., Montana; Rural Electric Company, Idaho; Salem Electric, Oregon; Salmon River Electric Cooperative, Inc., Idaho; Tanner Electric, Washington; Umatilla Electric Cooperative Association, Oregon; Unity Light and Power Company, Washington; Vigilante Electric Cooperative, Inc., Montana; Wasco Electric Cooperative, Inc., Washington; Wells Rural Electric Company, Nevada; West Oregon Electric Cooperative, Inc., Oregon; Ernst & Whinney, CPA's; Blyth, Eastman, Paine, Webber, Inc.; Donald C. Patterson, III; Stanley T. Pardo; Paine, Webber, Inc., Paine, Webber, Jackson & Curtis, Inc.; R.W. Beck & Associates; United Engineers And Constructors, Inc.; Ebasco Services, Inc.; Wood & Dawson; Houghton, Cluck, Coughlin & Riley

Additional appellee:

Chemical Bank in its capacity as bond trustee for Washington Public Power Supply System Nuclear Projects 4 and 5 Bonds.